IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7716 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.K.BUCH, (SINCE DECEASED) THRO' L.R.SHRI C.P.BUCH

Versus

CHAIRMAN, GUJARAT ELECTRICITY BOARD & Ors.

Appearance:

1. Special Civil Application No. 7716 of 1990

MR BP TANNA with Mr. NIKHIL S KARIEL for Petitioner

MR MD PANDYA for Respondent No. 1

MS MITA PANCHAL AGP for Respondents No. 2

MR RC KODEKAR for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/12/2004

ORAL JUDGEMENT

The petitioner, a retired employee of the Gujarat Electricity Board, the respondent no. 2 herein [hereinafter referred to as, "the Board"] claims a right to receive pension.

In the year 1942, the petitioner joined service of the then State of Bombay in its Civil Supplies Department. In the year 1957, on account of decontrol policy of the State, the petitioner and other employees serving in the Civil Supplies department became surplus. As far as possible, such surplus employees were absorbed in the other Government departments or Semi-Government Oranizations. The petitioner secured employment in the Bombay State Electricity Board. On reorganization of the State of Bombay and formation of the State of Gujarat, the petitioner's service came to be transferred to newly constituted Gujarat Electricity Board. The petitioner served in the Board till he reached the age of superannuation i.e., till the year 1976. In the year 1988, the petitioner made a representation and claimed the benefit of pension and other retiral benefits considering his continuous service from 1942 to 1976. The said representation came to be rejected. Feeling aggrieved, the petitioner has preferred the present petition.

Pending this petition, the petitioner has passed away. His son, being his heir and legal representative, has been substituted as the petitioner.

Pending this petition, the State Government was directed to consider the claim of the petitioner. After such consideration, by order dated 19th May, 1993, the petitioner's claim was rejected. The petitioner has challenged the said order also. The petitioner has prayed that his entire service from the year 1942 to 1976 be considered pensionable service and he be paid pension, gratuity, etc.

Learned advocate Mr. Tanna has submitted that the petitioner joined service of the then State of Bombay on 25th August, 1942. He served in the Civil Supplies department of the State of Bombay till 31st May, 1957. He was absorbed in the Bombay State Electricity Board [hereinafter referred to as, "the BSE Board"] with effect from 1st June, 1957. He served in the BSE Board till 30th April, 1960. He was absorbed in the service of the Board on 1st May, 1960 and served the Board till he reached the age of superannuation and retired from service in the year 1976. On his retirement, he received

the amount of Contributory Provident Fund. However, one Shri Sunder Raj who was similarly situated as the petitioner, was on his representation, extended the benefit of pension. The petitioner is thus meted discriminatory treatment and has not been extended benefits as were extended to the aforesaid Shri Sunder Raj.

Mr. Tanna has further submitted that the petitioner's service under the State of Bombay was pensionable service. The Government of Maharashtra, the successor to the State of Bombay had, under its letter dated 23rd February, 1993, agreed to accept the pensionary liability for the service rendered by the petitioner in the State of Bombay for the period from 25th August, 1942 to 31st May, 1957 provided the Government of Gujarat accepted its liability to pay pension and other benefits to the petitioner for the service rendered by the petitioner since 1st June, 1957; provided further that the petitioner refunded the amount of gratuity received by him. He has submitted that the petitioner had received gratuity in the sum of Rs. 1,500/= which the petitioner has refunded. However, the Government of Gujarat has not accepted its liability to pay pension to the petitioner which has created a stalemate. The Government of Gujarat has, by its order dated 19th May, 1993 rejected the claim of the petitioner on the sole ground that the petitioner had voluntarily accepted to be the member of the Contributory Provident Fund Scheme [hereinafter referred to as "the CPF"]. He, therefore, is not entitled to the benefit of the pension scheme. Mr. Tanna has joined issue with the reasoning assigned by the Government of Gujarat. He has submitted that the BSE Board had adopted the CPF and did not have the pension scheme. The petitioner had, therefore, no choice but to accept the CPF. The petitioner, therefore, cannot be said to have intentionally or voluntarily accepted/opted for the CPF. He has submitted that the Government of Gujarat had, by its Resolution dated 15th March, 1970, decided that in such cases specific consent of the servant concerned should be taken either to opt for the CPF or to opt for the pension scheme. He has submitted that it was, therefore, required that the petitioner be given option to accept either of the two schemes. The petitioner, however, was not extended the said benefit. No option at the relevant time was offered to the petitioner which ought to have been offered to him. The petitioner, therefore, cannot be denied the benefit of pension under the Pension Scheme on the sole ground that the petitioner had voluntarily accepted the CPF.

Mr. Tanna has submitted that the delay also shall not defeat the claim of the petitioner. He has submitted that the pension is the statutory right and not a bounty. It is a recurring claim. The same, therefore, cannot be denied on the ground of delay or latches also.

The petition is contested by the learned advocate Mr. Pandya. He has denied that the petitioner's service was absorbed in the BSE Board. He has submitted that the petitioner was given a fresh appointment in the BSE Board. He has submitted that the case of Shri Sunder Raj was quite different from that of the petitioner. The said Shri Sunder Raj was the employee of the erstwhile State of Kolhapur in its Power House. Pursuant to the merger of the State of Kolhapur with the State of Bombay, he was absorbed in the service of the State of Bombay in its Electric Grid Department. In the year 1954, on formation of the BSE Board, the service of the said Shri Sunder Raj was transferred to the BSE Board. At the relevant time, he was not given option either to accept CPF or to continue in the pension scheme. The CPF was applied to him automatically without offering him the option to select either of the two schemes. On representation made by the said Shri Sunder Raj in the year 1961, he was extended the benefit of pension scheme. Mr. Pandya has also relied upon the Order dated 3rd April, 1994 made by this Court [Coram : J.N Bhatt, J.] in Special Civil Application No. 7956 of 1993 wherein a similar claim made by one Shri J.M Shah, similarly situated as the present petitioner, was rejected by this Court. The said Shri Shah had also approached the Hon'ble Supreme Court by writ petition {Civil} No. 157 of 1995. The said petition also was dismissed by the apex Court.

The Government Resolution dated 15th March, 1970 relied upon by Mr. Tanna is clarification to the Government Resolutions dated 4th February, 1965 and 26th July, 1965 and the Government Notification dated 29th December, 1967. Ms. Panchal has submitted that there is some printing error. The concerned Resolutions are of 24th February, 1966 and of 26th July, 1966. Today, with the consent of Mr. Tanna, the learned AGP Ms. Panchal is permitted to produce the said Government Resolutions dated 4th February, 1966, 26th July, 1966 and Government Notification dated 29th December, 1967. By the said Resolutions and the Notification, the State Government has, with effect from 1st May, 1960, made certain amendments to the Bombay Civil Service [Revised Pension] Rules, 1950.

I am of the view that the claim made by the petitioner is thoroughly misconceived. The Government Resolution dated 15th March, 1970 is clarification to the earlier Resolutions dated 4th February, 1966 and 26th July, 1966 and the Government Notification dated 29th December, 1967. By the said Resolution dated 15th March, 1970, the question, "whether the service rendered in the ex-Civil Supplies Department in the pre-reorganized Bombay State should be treated as pensionable and can be counted for pension in full even after the deletion of Rule 43 of the Revised Pension Rules" was considered and it was decided that, "the service rendered in the ex-Civil Supplies Department will count in full for the purpose of pension provided the concerned personnel of the ex-civil supplies Department refund the amount of gratuity which may have been paid to them." Evidently, the said clarification was made with respect to the servants of the State Government who were governed by the said Revised Pension Rules. At no time during his service under the Bombay State Electricity Board or the Gujarat Electricity Board, the petitioner was governed by the said Revised Pension Rules. The above referred clarification, therefore, shall not apply in case of the petitioner.

It is also misleading to say that the petitioner was allocated to the BSE Board. The appointment order of the petitioner has been produced by the Board alongwith its counter affidavit. The BSE Board had selected and employed the petitioner as Establishment Superintendent as a fresh entrant. The appointment order dated 3rd May, 1957 refers to the application made by the petitioner and the subsequent interview held by the BSE Board. The petitioner was appointed on probation for a period of one year on terms and conditions mentioned therein. Thus, it is not true that in view of the decontrol policy of the State of Bombay, the petitioner was allocated to the BSE Board. The petitioner, having entered the service of the BSE Board, distinct from the service rendered in the Civil Supplies Department, was governed by the terms and conditions mentioned in the order of appointment and the ones applicable to the employees of the BSE Board. The service book also refers to the benefit of CPF. The said service book was countersigned by the petitioner at the relevant time. It is also an admitted fact that the Gujarat Electricity Board had not adopted the pension scheme but the CPF. The petitioner, after his transfer to the Gujarat Electricity Board continued to be governed by the CPF. On his retirement, he was given the benefit of the CPF. Thus, the petitioner's claim for extending

him the benefits of pension scheme is not sustainable.

As recorded hereinabove, the said Shri Sunder Raj was the employee of the Kolhapur State in its Power House. On merger of the Kolhapur State with the State of Bombay, the said Shri Sunder Raj was absorbed in the Electric Grid Department of the State of Bombay. On formation of the BSE Board, he was transferred to the BSE Board and was governed by the CPF Scheme. The service of the said Shri Sunder Raj under the State of Kolhapur and the State of Bombay was pensionable service. He was, therefore, on his transfer to the BSE Board, entitled to an option either to continue in pension scheme or to opt for CPF. As at the relevant time such option was not given to the said Shri Sunder Raj, on his request made in the year 1961, he was continued under the Pension Scheme. The case of the petitioner is entirely different from the said Shri Sunder Raj. The petitioner, therefore, cannot claim the benefit of pension scheme on the principle of equality also.

As to the petitioner's claim for option, it has been stated that prior to the formation of the BSE Board, the execution and administration of the Electricity Schemes were conducted by the Government through its Electric Grid Department. With the merger of the former Indian States, several powerhouses and the staff attached thereto were merged in the State's area and came under the control of Electric Grid Department. This merged staff continued to be governed by the pension scheme. On formation of the BSE Board, after considering the demand made by the merged staff, the Government of Bombay by its Resolution dated 22nd August, 1956 decided that the ex-State servants of the power houses be treated as pensioned off by liquidating their pensionary liabilities as on 6th November, 1954 and the amount equal to the commuted value of pension be credited to Contributory Provident Fund of the BSE Board. By a subsequent Resolution dated 30th March, 1959 a partial modification was made to the effect that prior consent of the merged powerhouse staff should be obtained for payment into the Contributory Provident Fund.

As recorded hereinabove, the petitioner was not an employee of the Electric Grid Department of the State of Bombay nor was his service transferred to BSE Board on its formation. The petitioner was employed in the Civil Supplies Department. On account of decontrol policy, the petitioner had been rendered surplus. He was given appointment in the BSE Board afresh, after selection. The petitioner, therefore, cannot claim the benefits

extended to the merged staff of the erstwhile princely States or the employees of the former Electric Grid Department. On the petitioner's becoming surplus, his service under the State of Bombay came to an end and his dues, including gratuity in the sum of Rs. 1,500/= were paid to him. Thus, the petitioner's claim for pension and other retiral benefits against the Gujarat Electricity Board or the Government of Gujarat is not maintainable.

Mr. Tanna has also relied upon the provisions contained in the Bombay Reorganization Act, 1960 [hereinafter referred to as, "the Act of 1960"], particularly Sections 53 & 81 thereof. Section 53 of the Act of 1960 provides that, "..The assets and liabilities relating to any commercial or industrial undertaking of the State of Bombay shall pass to the State in which the undertaking is located." The said section shall have no applicability in the subject matter of the present case.

Chapter-VIII of the Act of 1960 makes provisions as to the service. Section 80 thereof makes provision relating to All India Services and Section 81 makes provision relating to other services. Mr. Tanna has vehemently argued that the other services referred to in Section 81 of the Act of 1960 are the services other than the State Services i.e. the services under the Semi-Government Organizations. I am unable to agree with Mr. Tanna. What is referred to by 'other services' is the services under the State Government other than All India Services. The said Section 81 necessarily applies to the persons who immediately before the appointed day (i.e. 1st May, 1960) were serving in connection with the affairs of the State of Bombay. Immediately before the appointed day i.e. on 30th April, 1960, the petitioner was the servant of the Bombay State Electricity Board, he cannot be said to be serving in connection with the affairs of the State of Bombay. Hence, Section 81 of the Act of 1960 also would not be attracted in the present case.

No other contention is raised before me. For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged. There shall be no order as to cost.

The petitioner shall be entitled to receive the amount of gratuity refunded by him. The State of Maharashtra, the respondent no. 3 is directed to remit the aforesaid sum of Rs. 1,500/= to the petitioner forthwith.

{Miss R.M Doshit, J.}

Prakash*